hold is limited to the ancestor and a remainder to his heirs, the word "heirs" is a word of limitation and not of purchase (1 Co. 104a), is admitted by both the Texas and Illinois courts to be a rule of law and not of construction, and is to be applied, if at all, regardless of the testator's intent. The question in every case is to determine whether "heirs" was used in the technical sense, as referring to those persons entitled under the laws of descent and distribution to the real property of one dying intestate, or is used to denote particular persons or class of persons. If "heirs" is used in the latter sense the rule has no application. *Archer's Case,* 1 Co. 66b; *Van Grutten* v. *Foxwell* (1897), 22 App. Cas. 658; *Stisser* v. *Stisser,* 235 Ill. 207. In the Texas case the court reaches the conclusion that by "heirs" the grantor meant "children" because of the indiscriminate use of "heirs" and "heirs of the body" and the impossibility of giving effect to the provision for dividing the remainder between L C and his heirs. In the Illinois case the court says that the testator meant "blood relatives" of his wife when he said "heirs," and effect is given to his obvious intent as regards the personality, although the court feels bound by the Rule as regards the realty. If it is meant by this that "heirs" was used in the technical sense—the testator supposing that his wife's heirs would be composed of her blood relatives, and not providing for the contingency which actually occurred, viz., his surviving his wife and his incapacity for changing his will thereafter—then the two cases can be distinguished. It is felt, however, that the less conservative Texas court would have given effect to the testator's intent as regards both the realty and the personalty had the facts in the Illinois case been before it.

SPECIFIC PERFORMANCE—"NULL AND VOID" PROVISO CONSTRUED "VOIDABLE" AT VENDEE'S OPTION.—Defendant agreed in writing to sell plaintiff certain real estate. The contract provided that if, for any reason, a good and marketable title could not be given, "this agreement shall be null and void, and the sum paid on account as above provided shall be returned by the party of the first part in lieu of all claims for damages or otherwise." Plaintiff contended that *"null and void"* meant *"voidable"* at the option of the vendee, and insisted upon such performance as defendant could give, though the title was not marketable. *Held,* (one judge dissenting), that defendant must give performance, apparently upon payment of full purchase price without abatement. *Medoff* v. *Vandersaal* (Pa., July, 1921), 114 Atl. 618.

It is significant that the majority opinion was unable to disclose a single case to support its view. The dissenting judge cited three cases supporting the view that the contract was null and void as to both parties if the title was not marketable. In the first of those cases the contract provided that if the title was not marketable the agreement should be "void, and delivered up" and cancelled. The court said: "They might both think it would be equally to their interest that the agreement should be put an end to if the counsel of the purchaser should be of opinion that a marketable title could not be made." *Williams* v. *Edwards* (1827), 2 Simons 79. In the second

case the language of the agreement was, "this agreement shall be void, and the above two hundred dollars refunded." The court said: "The provision is absolute that *this agreement—i. e., the whole agreement*—shall be *void.*" *Mackey* v. *Ames* (1883), 31 Minn. 103. In the last case considered by the dissenting judge the contract provided: "It is agreed that if the title to said premises is not good, and cannot be made good, this agreement shall be void and the above $50 refunded." The court was of the opinion that the contract contained no ambiguity, and was void as to both parties, adding: "The rule of practical construction applies only in cases where the contract is indefinite, uncertain, or susceptible of different interpretations." *Schwab* v. *Baremore* (1905), 95 Minn. 295. The writer was able to find only one other case where the provisions in the contract were practically identical with those of the principal case. That case was decided like the last three considered. *Marchman* v. *Fowler* (1916), 145 Ga. 682. In *Weatherford* v. *James* (1841), 2 Ala. 170, the defendant contracted to sell certain lands if he could give a marketable title, and further agreed that if he could not give such title he would execute a mortgage upon certain slaves to secure repayment of the purchase money. He could not give a marketable title, but the court held that a conveyance with abatement could not be demanded of the defendant, the theory being that the contract to convey the land depended absolutely upon the contingency. For cases analogous to the principal case, in which it was held that the vendor could not be compelled to perform, see *Duddell* v. *Simpson* (1866), L. R. 2 Ch. 102; *Mawson* v. *Fletcher* (1870), L. R. 6 Ch. 91; *Hoy* v. *Smythies* (1856), 22 Beav. 510. For the same interpretation of a statute where a similar question was raised, see *Mundy* v. *Shellaberger,* 161 Fed. 503.

SPECIFIC PERFORMANCE—RELIEF ON TERMS VARYING FROM THE CONTRACT. —Plaintiff contracted to buy and the defendant to sell certain real property. About $1,000 had been paid. On February 1 an interest installment fell due and was unpaid. On April 12 the vendor served notice of forfeiture pursuant to the terms of the contract. On April 23 he sold the premises to a third party, who had notice of the facts. On April 27 the plaintiff tendered the amount due, with the excuse that he had not known it was overdue. Tender was refused. Plaintiff sued for specific performance. *Held,* upon payment within 30 days of the entire unpaid purchase price (although the remainder of the price, amounting to about $3,000, would not have fallen due under the terms of the contract for some years to come), all interest and taxes in arrears, compensation for improvements made by the third party purchaser, $50 attorney's fees, and costs, the plaintiff may recover. *Hubbell* v. *Ohler* (1921), 213 Mich. 664.

In spite of the express terms of the contract, the Michigan court declined to permit a forfeiture of the payments made. The underlying principle of the decision is not new to equity jurisprudence. "Equity abhors a forfeiture." The treatment accorded the express provisions of the mortgage is closely analogous. *Richmond* v. *Robinson,* 12 Mich. 193. The interesting feature of the decision in the principal case is the fact that the court,